Bank Muamalat Malaysia Bhd & Ors v Redha Resources Sdn Bhd & Ors

COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NO B-02(IM)(MUA)-1355–08 OF 2015
ROHANA YUSUF, VARGHESE GEORGE JJCA AND MARY LIM J
24 OCTOBER 2016

Banking — Banker and customer — Claim for amount outstanding under banking facility — Appellants granted Islamic syndicated financing to respondents — Respondents defaulted in payments — Appellants terminated Islamic syndicated financing and filed summary judgment pursuant to O 14 r 1 of the Rules of Court 2012 — Whether 'Bai Inah' transaction between respondents and third appellant contravene law of contract — Whether transaction between respondents and third appellant affect first and second appellants — Whether there was triable issue — Whether summary judgment should be entered

Civil Procedure — Summary judgment — Action to recover monies loaned — Appellants granted Islamic syndicated financing to respondents — Respondents defaulted in payments — Appellants terminated Islamic syndicated financing and filed summary judgment pursuant to O 14 r 1 of the Rules of Court 2012 — Whether 'Bai Inah' transaction between respondents and third appellant contravene law of contract — Whether transaction between respondents and third appellant affect first and second appellants — Whether there was triable issue — Whether summary judgment should be entered — Rules of Court 2012 O 14 r 1

The first, second and third appellants had granted Islamic syndicated financing in the sum of RM125.8m to the respondents for the purpose of facilitating the first respondent to perform its obligations under a concession agreement in a development project. To that effect, the first respondent had entered into agreements with the first and second appellants involving *Istisna'* transaction ('the first transaction') and at the same time the first respondent had also entered into asset sale agreement ('ASA') and asset purchase agreement ('APA') with the third appellant involving *Bai' Inah* transaction ('the second transaction'). A breach occurred when the first respondent defaulted in its payment under both transactions. Consequently, the appellants issued a notice of demand of the outstanding sum and terminated the Islamic syndicated financing. The first appellant as the facility agent had also issued a certificate of indebtedness to all the respondents for the outstanding sum. There was no challenge by the respondents on the demand letter and certificate of indebtedness issued by the appellants. The appellants then applied for

summary judgment of the outstanding sum pursuant to O 14 r 1 of the Rules of Court 2012 nonetheless, it was dismissed by the learned trial judge. The learned trial judge found that the first respondent had successfully raised triable issues when Her Ladyship accepted the respondents' contention that the second transaction may contravene the law of contract on the basis that the asset in the *Bai' Inah* transaction purchased by the first respondent under the ASA would never pass to the first respondent eventually. In support of her finding, the trial judge distinguished the facts of the instant case to the decision of the court in *Bank Islam Malaysia Bhd v Lim Kok Hoe & Anor and other appeals* [2009] 6 MLJ 839. The learned trial judge had also questioned the validity of the transaction documents which Her Ladyship described as involving 'fictional sale', and would contravene the law of contract. Dissatisfied with the learned trial judge's decision, the appellants filed the present appeal. The appellants submitted that the second transaction did not concern the transaction between the first respondent with the first and second appellants. Even if the issue was meritorious and was a triable one, it would only hold good vis a vis the third appellant.

Held, setting aside the order of the learned trial judge and allowing the appeal with costs of RM30,000 here and below:

(1) The issue raised by the respondents involved the validity of the agreements in the second transaction between the first respondent with the third appellant. It was plain that this issue would have no bearing on the agreements entered between the first respondent and the other two appellant banks. It was therefore of no relevance to the transaction between the first respondent with the other two appellant banks (see para 14).

(2) The learned trial judge had erred in making comparisons between the *Bai' Inah* transaction in the present case with the *Bai' Bithamin Ajil* transaction in *Lim Kok Hoe*'s case. The two transactions were not similar and the comparison made on the basis that the asset in the *Bai' Inah* transaction in the present appeal did not eventually transfer back to the first respondent, was therefore misplaced (see para 18).

(3) The Contracts Act 1950 does not prohibit sale of beneficial interest in a property, or any right attached to it. The terms of the ASA and APA both clearly stipulated that it was a sale of beneficial interest in the asset or in the property. Thus, the sale of beneficial interest in the *Bai' Inah* transaction did not contravene the law of contracts on that basis as it was premised on the sale of beneficial interest. Further, the parties in the present case were aware of these clear terms and had agreed on these terms voluntarily. They had also acted on the agreements and the respondents had in fact benefitted from the transactions involved and should not be allowed to raise issues on the terms voluntarily agreed upon. In addition

to that, there was no vitiating factor that would vitiate the agreements in the instant case (see paras 20–22). A

(4) There was no dispute as to the amount owed as the certificate of indebtedness was not challenged by the respondents. There was also no dispute that the respondents had entered into the various agreements with the appellants. Thus, in totality, this was an appropriate case for summary judgment to be entered (see para 23). B

[Bahasa Malaysia summary

Perayu pertama, kedua dan ketiga telah memberikan sindiket pembiayaan Islam yang berjumlah sebanyak RM125.8 juta kepada responden bagi tujuan memudahkan responden pertama tanggungjawabnya di bawah perjanjian konsesi dalam satu projek pembangunan. Bagi maksud itu, responden pertama telah memasuki ke dalam perjanjian dengan perayu pertama dan kedua melibatkan transaksi *Istisna'* ('transaksi pertama') dan pada masa yang sama responden pertama juga telah memasuki dalam perjanjian jualan aset ('PJA') dan perjanjian belian aset ('PBA') dengan perayu ketiga melibatkan transaksi *Bai' Inah* ('transaksi kedua'). Satu kemungkiran berlaku apabila responden pertama mengingkari dalam bayarannya di bawah kedua-dua transaksi. Akibatnya, perayu mengeluarkan notis tuntutan jumlah tertunggak dan menamatkan sindiket pembiayaan Islam. Perayu pertama sebagai ejen kemudahan juga telah mengeluarkan sijil hutang kepada kesemua responden untuk jumlah tertunggak. Tiada cabaran daripada responden terhadap surat tuntutan dan sijil hutang yang dikeluarkan oleh perayu. Perayu kemudian telah memohon untuk penghakiman ringkas untuk jumlah tertunggak menurut A 14 k 1 Kaedah-Kaedah Mahkamah 2012 namun, ia telah ditolak oleh hakim perbicaran yang bijaksana. Hakim perbicaraan yang bijaksana mendapati responden pertama telah berjaya membangkitkan isu yang boleh dibicarakan apabila YA hakim menerima penegasan responden bahawa transaksi kedua mungkin bersalahan dengan undang-undang kontrak atas dasar bahawa aset dalam transaksi *Bai' Inah* yang dibeli oleh responden pertama di bawah PJA tidak akan berpindah kepada responden akhirnya. Dalam menyokong dapatannya, hakim perbicaraan membezakan fakta kes ini kepada keputusan mahkamah dalam kes *Bank Islam Malaysia Bhd v Lim Kok Hoe & Anor and other appeals* [2009] 6 MLJ 839. Hakim perbicaraan bijaksana juga telah mempersoalkan kesahan dokumen transaksi yang mana YA gambarkan seperti melibatkan 'fictional sale', dan akan bertentangan dengan undang-undang kontrak. Tidak berpuas hati dengan keputusan hakim perbicaraan bijaksana, perayu memfailkan rayuan ini. Perayu mengemukakan bahawa transaksi kedua tidak melibatkan transaksi antara responden pertama dan perayu kedua. Jika pun isu adalah bermerit dan boleh dibicarakan, ia hanya akan terus baik perayu ketiga.

C D E F G H I

Diputuskan, mengetepikan perintah hakim perbicaraan bijaksana dan

membenarkan rayuan dengan kos sebanyak RM30,000 di mahkamah ini dan Mahkamah Tinggi:

(1) Isu yang ditimbulkan oleh responden melibatkan kesahan perjanjian dalam transaksi kedua antara responden pertama dengan perayu ketiga. Ia adalah jelas bahawa isu ini tidak akan mempunyai kaitan terhadap perjanjian yang dimasukki antara responden pertama dan dua perayu bank yang lain. Ia adalah oleh itu tidak relevan terhadap transaksi antara responden pertama dengan dua perayu bank lain (lihat perenggan 14).

(2) Hakim perbicaraan bijaksana telah terkhilaf dalam membuat perbandingan antara transaksi *Bai' Inah* dalam kes ini dengan transaksi *Bai' Bithaman Ajil* dalam kes *Lim Kok Hoe*. Kedua-dua transaksi tidak serupa dan perbandingan dibuat berdasarkan bahawa aset dalam transaksi *Bai' Inah* dalam rayuan ini tidak akhirnya dipindahkan semula kepada responden pertama, adalah oleh itu tidak kena pada tempatnya (lihat perenggan 18).

(3) Akta Kontrak 1950 tidak menghalang jualan kepentingan benefisial dalam hartanah, atau apa-apa hak berkaitan dengannya. Terma PJA dan PBA kedua-duanya jelas menetapkan bahawa ia adalah satu jualan kepentingan benefisial dalam aset atau dalam hartanah. Maka, jualan kepentingan benefisial dalam transaksi *Bai' Inah* tidak bertentangan undang-undang kontrak atas dasar itu kerana ia berasaskan jualan kepentingan benefisial. Selanjutnya, pihak-pihak dalam kes ini sedar akan terma jelas dan telah bersetuju dengan terma ini secara sukarela. Mereka juga telah bertindak terhadap perjanjian dan responden ternyata telah mendapat faedah daripada transaksi terlibat dan tidak sepatutnya dibenarkan untuk menimbulkan isu terhadap terma yang dipersetujui secara sukarela. Tambahan lagi, tiada faktor tidak sah yang akan melucutkan perjanjian dalam kes ini (lihat perenggan 20–22).

(4) Tiada pertikaian terhadap jumlah terhutang memandangkan sijil hutang tidak dicabar oleh responden. Tiada pertikaian juga bahawa responden telah memasuki dalam pelbagai perjanjian dengan perayu. Maka, secara keseluruhan, ini adalah satu kes wajar untuk penghakiman ringkas dimasukkan (lihat perenggan 23).]

Notes

For a case on claim for amount outstanding under banking facility, see 1(2) *Mallal's Digest* (5th Ed, 2015) para 2461.

For cases on action to recover monies loaned, see 2(5) *Mallal's Digest* (5th Ed, 2015) paras 9096–9101.

Cases referred to

Bank Islam Malaysia Bhd v Lim Kok Hoe & Anor and other appeals [2009] 6 MLJ 839, CA (distd)

Bank Kerjasama Rakyat Malaysia Bhd v Sea Oil Mill (1979) Sdn Bhd & Anor [2010] 2 MLJ 740; [2010] 1 CLJ 793, FC (refd)
Dato' Haji Nik Mahmud bin Daud v Bank Islam Malaysia Bhd [1998] 3 MLJ 393; [1998] 3 CLJ 605, CA (refd)
Kuwait Finance House (Malaysia) Bhd v Vesta Energy Sdn Bhd & Ors [2012] MLJU 1762; [2012] 9 CLJ 516, HC (refd)
Low Chin Meng v CIMB Islamic Bank Berhad [2014] MLJU 1862; [2015] 5 CLJ 324, CA (refd)

Legislation referred to

Contracts Act 1950
Rules of Court 2012 O 14 r 1

Appeal from: Writ No 22M-18–11 of 2015 (High Court, Shah Alam)

Mohd Zein bin Md Tajuddin (Nooraishah Azis with him) (Md Tajuddin & Co) for the appellants.
Idris bin Md Isa (Mohd Zakwan bin Othman with him) (Idris & Partners) for the respondents.

Rohana Yusuf JCA (delivering judgment of the court):

[1] This appeal is against the dismissal of a summary judgment application by the High Court at Shah Alam pursuant to O 14 r 1 of the Rules of Court 2012.

[2] The appellants are three financial institutions known as Bank Muamalat Malaysia Bhd ('the first appellant'), Bank Kerjasama Rakyat Malaysia Bhd ('the second appellant') and Bank Pembangunan Malaysia Bhd ('the third appellant'). The appellants had granted Islamic syndicated financing in the sum of RM125.8m to the first respondent, Redha Resources Sdn Bhd. The second, third and fourth respondents are guarantors to the said financing facilities.

[3] The Islamic syndicated financing was for the purpose of facilitating the first respondent to perform its obligations under a concession agreement known as 'Cadangan Membina, Mengendali Dan Memindahmilik Secara Perkongsian Sektor Awam Dan Swasta Untuk Pembangunan Kediaman Pelajar Dan Pusat Pelajar Kolej Universiti Islam Selangor bertarikh 07.03.2006'. This concession involves the carrying out of, amongst others, the design, building and completion of student accommodation and student centre of Kolej Universiti Islam Selangor ('the project') by the first respondent.

[4] Bank Muamalat, the first appellant was appointed as the facility agent

under the facility agreement dated 3 August 2007 entered between the appellants and the first respondent.

[5] To facilitate the financing facilities the first respondent had entered into the two different sets of agreements with the appellants. The first set of agreements was between the first respondent with Bank Muamalat as well as Bank Rakyat. These agreements are agreements made in line with what is described as *Istisna'* transaction. To facilitate the *Istisna'* transaction, the first respondent entered into the following agreements with both Bank Muamalat and Bank Rakyat:

(a) master *Istisna'* financing agreement dated 3 August 2007 (pp 229 *RR Jld* 2(1));

(b) the purchase agreement dated 3 August 2007 (pp 300 *RR Jld* 2(1)); and

(c) the sale agreement dated 3 August 2007 (see pp 305 *RR Jld* 2(1)).

[6] Pursuant to cl 3.1 of the purchase agreement the first respondent sold the project which was to be constructed by the first respondent, to both the first and the second appellants at an *Istisna'* purchase price of RM87.4m. This *Istisna'* purchase price would be the financing sum granted by both the appellants to the first respondent. The project was then sold back to the first respondent by both the appellant banks under the sale agreement at the *Istisna'* selling price of RM214.1m. This *Istisna'* selling price will be paid by the first respondent on a deferred payment basis as stipulated under cl 4 of the purchase agreement and in accordance with the terms of the master *Istisna'* facility agreement. Clause 17.1(a) of the master *Istisna'* financing agreement provides that the *Istisna'* selling price will be paid by the first respondent to the appellants by way of 58 quarterly payments.

[7] The second set of agreements was entered into by the first respondent with the third appellant on what is described as *Bai' Inah* transaction. Under the *Bai' Inah* transaction there were the asset sale agreement and asset purchase agreement both dated 3 August 2007 executed by the first respondent with the third appellant. Pursuant to cl 2.1 of the asset sale agreement ('ASA') the third appellant sold its asset, identified as Floor 1-10 of Menara SME Bank, Jalan Sultan Ismail, Kuala Lumpur held under the title deed particulars Lot 1819–Lot PT 366, No Hakmilik 19077-CT 19088 and HSB 66964, Seksyen 41, Kuala Lumpur at the *Bai' Inah* selling price of RM148.690m. Clause 2.2 of the asset sale agreement stipulates that the beneficial ownership in and/or rights to the asset shall immediately pass from the third appellant to the first respondent upon the execution of the asset sale agreement. The *Bai' Inah* selling price shall be paid by the first respondent on a deferred payment basis by way of 42 semi-annual instalments to the third appellant.

[8] Subsequently, the first respondent having purchased the asset under the ASA sold back the asset to the third appellant under the asset purchase agreement ('APA'). Pursuant to cl 2.1 of the APA the first respondent sold back to the third appellant the same asset at the '*Bai' Inah* Purchase Price' of RM38.4m. This *Bai' Inah* purchase price is in fact the financing amount by the third appellant to the first respondent as stated under cl 2.2 of the APA. This financing amount will be disbursed in accordance with the terms of the APA, in particular pursuant to cl 4.

[9] A breach occurred when the first respondent defaulted in its payment under both sets of agreements. As at 31 August 2014, the first respondent had caused and allowed the instalments for the *Istisna'* selling price and *Bai' Inah* selling price to be in arrears in the sum of RM7,669,506.01 (inclusive of *ta'widh*). A notice of demand issued by the solicitor demanding the amount due was not adhered to by the respondents. A subsequent notice of termination dated 20 January 2014 determined the Islamic syndicated financing and demanded the sum due of RM326,669.571.59 inclusive of *ta'widh,* as at 30 September 2014. This sum of RM326,699,571.59 was the outstanding *Istisna'* selling price and *Bai' Inah* selling price due to all the three appellants respectively as follows:

The first appellant — RM93,393,827.15;

The second appellant — RM86,956,262.33; and

The third appellant — RM146,312,454.57

[10] Concurrent to the demand made on the first respondent, a demand on the guarantors on a joint and several liability basis was also issued for the same amount. The first appellant as the facility agent had also issued a certificate of indebtedness to all the respondents for the amount of RM326,669,571.59 claimed, as at 30 September 2014. None of the respondents raised any challenge on the demand letter, nor on the certificate of indebtedness at p 749, *RR Jld* 2(4).

[11] All the three appellants applied for a summary judgment of the outstanding due by the first respondent which was dismissed by the learned trial judge.

[12] In her grounds of judgment the learned trial judge found that the first respondent had successfully raised triable issues when Her Ladyship accepted the argument raised by the respondents that the sale of the asset by the third appellant bank (Bank Pembangunan Malaysia Bhd) may contravene the law of contract. The learned trial judge made this finding on the basis that the asset in the *Bai' Inah* transaction purchased by the first respondent under the ASA would never pass to the first respondent eventually. In the judgment of the

High Court, this was found to be a novel issue that merits trial. The learned judge was distinguishing the facts of the instant appeal to the decision of this court in *Bank Islam Malaysia Bhd v Lim Kok Hoe & Anor and other appeals* [2009] 6 MLJ 839. Her Ladyship expressed concern that the asset which was the subject matter of the sale in that case was eventually transferred to *Lim Kok Hoe*, whereas not so in the instant appeal. Further to that, the learned judge also had questioned the validity of the transaction as she found, it involved a 'fictional sale', which would contravene contract law.

[13] Learned counsel for the appellants raised two main complaints against the decision of the learned trial judge. First, learned counsel drew our attention to the issue of the sale of asset between the first respondent with the third appellant, that it does not concern the transaction between the first respondent with the other two appellants. The issue raised on this point would have no bearing on the agreements with the other two appellants. That being so, even if this issue is meritorious and is a triable one, it will only hold good vis a vis the third appellant. There was no other issue raised by the respondents in relation to the transaction with the first and second appellants.

[14] We agree with learned counsel for the appellants that the issue raised by the learned counsel for the respondents call into question the validity of the agreements in the second set of agreements between the first respondent with the third appellant bank. It is plain that this issue would have no bearing on the agreements entered between the first respondent and the other two appellant banks. It is therefore of no relevance to the transaction between the first respondent with the other two appellant banks.

[15] On the issue raised by the respondents in relation to the *Bai' Inah* transaction with the third appellant, it is the finding of the learned trial judge that the effect of the transaction between the third appellant with the first respondent would not lead to the property being eventually transferred to the first respondent. The learned trial judge was comparing the present case to the case decided by this court in *Bank Islam Malaysia Bhd v Lim Kok Hoe & Anor and other appeals*. At the outset it must be noted that the transaction in *Lim Kok Hoe* was made for the purpose of financing the purchase of a house. Bank Islam Malaysia Bhd ('BIMB') in that case was providing financing to Lim Kok Hoe to purchase a house under what is described as a *Bai' Bithamin Ajil* ('BBA') transaction. The case of *Lim Kok Hoe* does not involve a *Bai' Inah* transaction. The BBA transaction differs to *Bai' Inah* transaction. We have earlier alluded to the *Bai' Inah* transaction and its implication in para 7 of this judgment.

[16] BBA transaction was demonstrated in *Lim Kok Hoe* at p 849 as these:

> In a typical BBA contract, the customer will first sell the property or asset to the bank under the property purchase agreement. The bank's purchase price would be

the amount required by the customer. That sum is called the facility amount or the financing amount. It is also described as the bank's purchase price.

The sale is a cash sale. The bank has to pay the purchase price to the customer immediately upon the completion of the documentation process. But in most cases, where a customer had entered into a sale and purchase agreement with a developer to purchase a house, and therefore needs financing, the bank and the customer would mutually agree that the bank shall release the amount (the bank's purchase price) to the developer in stages against progress payment certificates.

With that purchase, the property belongs to the bank. But, the customer is to buy it back from the bank and he will only be able to pay the price over a period of years. The bank will sell but the sale price will not be the same amount as the bank's purchase price. The sale price will include the bank's profit on the sale, which will later be calculated and added to the purchase price. The total amount is now the sale price. In effect, the bank will sell the very same property it has purchased from the customer to him at a selling price under the property sale agreement. The customer then will pay the bank's selling price over a period of years by monthly instalments. At that point the customer becomes the owner of the property again.

[17] The effect of the BBA transaction as explained above is that, because the customer under the ASA was purchasing the asset from the bank, the asset will eventually transfer to the customer upon full payment. Unlike this case the transaction between the first respondent and the third appellant under ASA and APA will not transfer the asset to the first respondent because the first respondent had sold back the asset to the third appellant under the APA. The first leg of the transaction in this case was the ASA. When the third appellant bank sold the asset to the first respondent, a debt in the form of the *Bai' Inah* selling price of RM148.690m was created against the first respondent. The first respondent owed the third appellant the debt of RM148.690m which the first respondent had agreed to pay on a deferred basis by way of 42 semi-annual instalments.

[18] The first respondent then by the APA sold the asset back to the third appellant bank at RM38.4m which effectively would be the amount the bank would disburse in accordance to the terms of the APA. This RM38.4m is the financing amount. By this transaction the asset had gone back to the third appellant bank. Thus the *Bai' Inah* transaction differs from the BBA transaction in *Lim Kok Hoe* altogether. The learned trial judge, in our view, had erred in making comparisons with the transaction in *Lim Kok Hoe* to the present transaction. The two transactions are not similar and the comparison made on the basis that the asset in the *Bai' Inah* transaction in the present appeal does not eventually transfer back to the first respondent, is therefore misplaced.

[19] The learned trial judge had also questioned the validity of the

transaction documents which Her Ladyship described as involving a 'fictional sale', and would contravene the law of contract. It is to be noted that the transactions in this case involved the sale and resale of the same asset under the APA and ASA. It is a term of the agreements in question that the 'beneficial ownership in or rights to the asset shall immediately pass from BPMP to the customer upon the execution of this Agreement' (see cl 2.3 of the ASA). The sale of beneficial interest in an asset had been accepted and acknowledged by this court in an Islamic banking transaction in *Low Chin Meng v CIMB Islamic Bank Berhad* [2014] MLJU 1862; [2015] 5 CLJ 324.

[20] The Contracts Act 1950 does not prohibit sale of beneficial interest in a property, or any right attached to it. The terms of the ASA and APA both clearly stipulate that it is a sale of beneficial interest in the asset or in the property. The sale of beneficial interest had also been recognised and accepted in the case of *Dato' Haji Nik Mahmud bin Daud v Bank Islam Malaysia Bhd* [1998] 3 MLJ 393; [1998] 3 CLJ 605 and in *Kuwait Finance House (Malaysia) Bhd v Vesta Energy Sdn Bhd & Ors* [2012] MLJU 1762; [2012] 9 CLJ 516. Thus, the sale of beneficial interest in a *Bai' Inah* transaction does not contravene the law of contracts on that basis as it is premised on the sale of beneficial interest. The *Bai' Inah* transaction has also been given effect to by the Federal Court in *Bank Kerjasama Rakyat Malaysia Bhd v Sea Oil Mill (1979) Sdn Bhd & Anor* [2010] 2 MLJ 740; [2010] 1 CLJ 793.

[21] Parties in this case were aware of these clear terms upon entering into all the agreements between them and have agreed on these terms voluntarily. They have acted on the agreements and the respondents had in fact benefitted from the transactions involved and should not be allowed to raise issues on the terms voluntarily agreed upon.

[22] We were reminded that in the case of *Lim Kok Hoe* too it was found that since the governing law of Islamic banking is the same law of contract, the same principles of contract apply in deciding Islamic banking cases. If the contract is not vitiated by any vitiating factor recognised by law, it is the duty of the court to uphold its sanctity. We do not find any vitiating factor that would vitiate the agreements in this case.

[23] On the whole, there was no dispute that the amount was owing for the certificate of indebtedness was not challenged by the respondents. There was no dispute that the respondents had entered into the various agreements with the appellants. As such, we find this to be an appropriate case for summary judgment to be entered.

[24] We therefore allow the appeal of the appellants with costs and enter judgment as per prayers (a)–(f) in the summary judgment application at

pp 60–63 of the appeal records. We set aside the order of the learned trial judge and allowed the appeal of the appellants with costs of RM30,000 here and below to the appellants.

Order of learned trial judge set aside; appeal allowed with costs of RM30,000 here and below.

Reported by Dzulqarnain Ab Fatar